Senate

General Assembly **File No. 221**

February Session, 2008 Substitute Senate Bill No. 521

Senate, March 27, 2008

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PRICE GOUGING AND THE PETROLEUM PRODUCTS GROSS EARNINGS TAX.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 42-234 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) As used in this section:

(1) "Energy resource" shall include, but not be limited to, middle distillate, residual fuel oil, motor gasoline, propane, aviation gasoline and aviation turbine fuel, natural gas, electricity, coal and coal products, wood fuels and any other resource yielding energy;

(2) "Seller" shall include, but not be limited to, a supplier, wholesaler, distributor or retailer involved in the sale or distribution in this state of an energy resource;

[(3) "Abnormal market disruption" refers to any stress to an energy resource market resulting from weather conditions, acts of nature, failure or shortage of a source of energy, strike, civil disorder, war, national or local emergency, oil spill or other extraordinary adverse circumstance.]

(3) "Additional costs" means all replacement and transportation costs and taxes incurred by a person within the chain of distribution;

(4) "Gross disparity" means an increase of more than fifteen per cent in the price of an energy resource;

(5) "Unconscionably excessive" means a price that represents a gross disparity between the price of an energy resource when compared to the highest price such energy resource was sold or offered for sale by the seller in the usual course of business during the seven days immediately prior to the declaration by the Governor of an energy resource market disruption emergency pursuant to subsection (e) of this section.

(b) No seller during any [period of abnormal market disruption] energy resource market disruption emergency declared by the Governor pursuant to subsection (e) of this section, or during any period in which [an imminent abnormal market disruption] such emergency is reasonably anticipated shall sell or offer to sell an energy resource for an amount that represents an unconscionably excessive price.

(c) Evidence that (1) the amount charged represents a gross disparity between the price of an energy resource that was the subject of the transaction and the price at which such energy resource was sold or offered for sale by the seller in the usual course of business immediately prior to [(A) the onset of an abnormal market disruption, or (B)] an energy resource market disruption emergency declared by the Governor pursuant to subsection (e) of this section, or any period in which [an imminent abnormal market disruption] such emergency is reasonably anticipated, and (2) the amount charged by the seller was not attributable to additional costs incurred by the seller in connection with the sale of such product, shall constitute prima facie evidence that a price is unconscionably excessive.

(d) This section shall not be construed to limit the ability of the Commissioner of Consumer Protection or the courts to establish certain acts or practices as unfair or unconscionable in the absence of [abnormal market disruptions] an energy resource market disruption emergency declared by the Governor pursuant to subsection (e) of this section.

(e) In the event of a state-wide or regional shortage or threatened shortage of an energy resource due to an abnormal market disruption resulting from a natural disaster, weather conditions, acts of nature, strike, civil disorder, war, national or local emergency or other extraordinary adverse circumstance, the Governor may proclaim that an energy resource market disruption emergency exists. Upon the declaration of such emergency, the Governor may, in connection therewith, issue orders designating an energy resource to be in short supply or in danger of becoming in short supply in the state or in a specific region of the state and imposing price restrictions or rationing with respect thereto. Prior to the issuance of such an order, the Governor shall make written findings that there is an abnormal market disruption, that the energy resource is in short supply or is in danger of becoming in short supply due to such disruption, that the energy resource is essential to the health, safety and welfare of the people of the state, and that the imposition of price restrictions on the energy resource or rationing of such resource is necessary to assure the health, safety and welfare of the people of the state.

(f) Any proclamation or order issued pursuant to this section shall become effective upon its filing in the office of the Secretary of the State and with the clerks of the Senate and the House of Representatives. Such proclamation or order shall be published in full at least once in a newspaper having general circulation in each county, provided failure to publish shall not impair the validity of such proclamation or order. Unless disapproved in accordance with the provisions of subsection (g) of this section, any proclamation or order shall remain in effect until the Governor proclaims an end to the emergency or until ninety days after the date of the proclamation of the emergency, whichever occurs first.

(g) Any proclamation or order issued pursuant to this section may be disapproved by a majority vote of each house of the General Assembly. Any such disapproval shall become effective upon filing notice of such action with the office of the Secretary of the State.

(h) Any natural person, trade association, corporation or other entity may register with the Commissioner of Consumer Protection as an agent for the purpose of being notified by said commissioner or said commissioner's agent in the event the Governor declares an energy resource market disruption emergency pursuant to subsection (e) of this section. Such natural person, trade association, corporation or other entity shall be notified of such emergency by said commissioner or said commissioner's agent in an expeditious manner when the Governor declares an energy resource market disruption emergency.

(i) A violation of the provisions of subsection (b) of this section shall be deemed an unfair or deceptive trade act or practice under subsection (a) of section 42-110b.

Sec. 2. Section 12-587 of the 2008 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) As used in this chapter: (1) "Company" includes a corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, individual or any fiduciary thereof; (2) "quarterly period" means a period of three calendar months commencing on the first day of January, April, July or October and ending on the last day of March, June, September or December, respectively; (3) "gross earnings" means all consideration received from the first sale within this state of a petroleum product; (4) "petroleum products" means those products which contain or are made from petroleum or a petroleum derivative; (5) "first sale of petroleum products within this state" means the initial sale of a petroleum product delivered to a location in this state; (6) "export" or "exportation" means the conveyance of petroleum products from within this state to a location outside this state for the purpose of sale or use outside this state; and (7) "sale for exportation" means a sale of petroleum products to a purchaser which itself exports such products.

(b) (1) Except as otherwise provided in subdivision (2) of this subsection, any company which is engaged in the refining or distribution, or both, of petroleum products and which distributes such products in this state shall pay a quarterly tax on its gross earnings derived from the first sale of petroleum products within this state. Each company shall on or before the last day of the month next succeeding each quarterly period render to the commissioner a return on forms prescribed or furnished by the commissioner and signed by the person performing the duties of treasurer or an authorized agent or officer, including the amount of gross earnings derived from the first sale of petroleum products within this state for the quarterly period and such other facts as the commissioner may require for the purpose of making any computation required by this chapter. Except as otherwise provided in subdivision (3) of this subsection, the rate of tax shall be (A) five per cent with respect to calendar quarters prior to July 1, 2005; (B) five and eight-tenths per cent with respect to calendar quarters commencing on or after July 1, 2005, and prior to July 1, 2006; (C) six and three-tenths per cent with respect to calendar quarters commencing on or after July 1, 2006, and prior to July 1, 2007; (D) seven per cent with respect to calendar quarters commencing on or after July 1, 2007. **[**, and prior to July 1, 2008; (E) seven and one-half per cent with respect to calendar quarters commencing on or after July 1, 2008, and prior to July 1, 2013; and (F) eight and one-tenth per cent with respect to calendar quarters commencing on or after July 1, 2013.**]**

(2) Gross earnings derived from the first sale of the following petroleum products within this state shall be exempt from tax: (A) Any petroleum products sold for exportation from this state for sale or use

outside this state; (B) the product designated by the American Society for Testing and Materials as "Specification for Heating Oil D396-69", commonly known as number 2 heating oil, to be used exclusively for heating purposes or to be used in a commercial fishing vessel, which vessel qualifies for an exemption pursuant to section 12-412 of the 2008 supplement to the general statutes; (C) kerosene, commonly known as number 1 oil, to be used exclusively for heating purposes, provided delivery is of both number 1 and number 2 oil, and via a truck with a metered delivery ticket to a residential dwelling or to a centrally metered system serving a group of residential dwellings; (D) the product identified as propane gas, to be used exclusively for heating purposes; (E) bunker fuel oil, intermediate fuel, marine diesel oil and marine gas oil to be used in any vessel having a displacement exceeding four thousand dead weight tons; (F) for any first sale occurring prior to July 1, 2008, propane gas to be used as a fuel for a motor vehicle; (G) for any first sale occurring on or after July 1, 2002, grade number 6 fuel oil, as defined in regulations adopted pursuant to section 16a-22c, to be used exclusively by a company which, in accordance with census data contained in the Standard Industrial Classification Manual, United States Office of Management and Budget, 1987 edition, is included in code classifications 2000 to 3999, inclusive, or in Sector 31, 32 or 33 in the North American Industrial Classification System United States Manual, United States Office of Management and Budget, 1997 edition; (H) for any first sale occurring on or after July 1, 2002, number 2 heating oil to be used exclusively in a vessel primarily engaged in interstate commerce, which vessel qualifies for an exemption under section 12-412 of the 2008 supplement to the general statutes; (I) for any first sale occurring on or after July 1, 2000, paraffin or microcrystalline waxes; (J) for any first sale occurring prior to July 1, 2008, petroleum products to be used as a fuel for a fuel cell, as defined in subdivision (113) of section 12-412 of the 2008 supplement to the general statutes; (K) a commercial heating oil blend containing not less than ten per cent of alternative fuels derived from agricultural produce, food waste, waste vegetable oil or municipal solid waste, including, but not limited to, biodiesel or low sulfur dyed diesel fuel; or (L) for any first sale occurring on or after July 1, 2007, diesel fuel other than diesel fuel to be used in an electric generating facility to generate electricity.

(3) The rate of tax on gross earnings derived from the first sale of grade number 6 fuel oil, as defined in regulations adopted pursuant to section 16a-22c, to be used exclusively by a company which, in accordance with census data contained in the Standard Industrial Classification Manual, United States Office of Management and Budget, 1987 edition, is included in code classifications 2000 to 3999, inclusive, or in Sector 31, 32 or 33 in the North American Industrial Classification System United States Manual, United States Office of Management and Budget, 1997 edition, or number 2 heating oil used exclusively in a vessel primarily engaged in interstate commerce, which vessel qualifies for an exemption under section 12-412 of the 2008 supplement to the general statutes shall be: (A) Four per cent with respect to calendar quarters commencing on or after July 1, 1998, and prior to July 1, 1999; (B) three per cent with respect to calendar quarters commencing on or after July 1, 1999, and prior to July 1, 2000; (C) two per cent with respect to calendar quarters commencing on or after July 1, 2000, and prior to July 1, 2001; and (D) one per cent with respect to calendar quarters commencing on or after July 1, 2001, and prior to July 1, 2002.

(c) (1) Any company which imports or causes to be imported into this state petroleum products for sale, use or consumption in this state, other than a company subject to and having paid the tax on such company's gross earnings from first sales of petroleum products within this state, which earnings include gross earnings attributable to such imported or caused to be imported petroleum products, in accordance with subsection (b) of this section, shall pay a quarterly tax on the consideration given or contracted to be given for such petroleum product if the consideration given or contracted to be given for all such deliveries during the quarterly period for which such tax is to be paid exceeds three thousand dollars. Except as otherwise provided in subdivision (3) of this subsection, the rate of tax shall be

(A) five per cent with respect to calendar quarters commencing prior to July 1, 2005; (B) five and eight-tenths per cent with respect to calendar quarters commencing on or after July 1, 2005, and prior to July 1, 2006; (C) six and three-tenths per cent with respect to calendar quarters commencing on or after July 1, 2006, and prior to July 1, 2007; (D) seven per cent with respect to calendar quarters commencing on or after July 1, 2007. **[**, and prior to July 1, 2008; (E) seven and one-half per cent with respect to calendar quarters commencing on or after July 1, 2008, and prior to July 1, 2013; and (F) eight and one-tenth per cent with respect to calendar quarters commencing on or after July 1, 2013. Fuel in the fuel supply tanks of a motor vehicle, which fuel tanks are directly connected to the engine, shall not be considered a delivery for the purposes of this subsection.**]**

(2) Consideration given or contracted to be given for petroleum products, gross earnings from the first sale of which are exempt from tax under subdivision (2) of subsection (b) of this section, shall be exempt from tax.

(3) The rate of tax on consideration given or contracted to be given for grade number 6 fuel oil, as defined in regulations adopted pursuant to section 16a-22c, to be used exclusively by a company which, in accordance with census data contained in the Standard Industrial Classification Manual, United States Office of Management and Budget, 1987 edition, is included in code classifications 2000 to 3999, inclusive, or in Sector 31, 32 or 33 in the North American Industrial Classification System United States Manual, United States Office of Management and Budget, 1997 edition, or number 2 heating oil used exclusively in a vessel primarily engaged in interstate commerce, which vessel qualifies for an exemption under section 12-412 of the 2008 supplement to the general statutes shall be: (A) Four per cent with respect to calendar quarters commencing on or after July 1, 1998, and prior to July 1, 1999; (B) three per cent with respect to calendar quarters commencing on or after July 1, 1999, and prior to July 1, 2000; (C) two per cent with respect to calendar quarters commencing on or after July 1, 2000, and prior to July 1, 2001; and (D)

one per cent with respect to calendar quarters commencing on or after July 1, 2001, and prior to July 1, 2002.

(d) The amount of tax reported to be due on such return shall be due and payable on or before the last day of the month next succeeding the quarterly period. The tax imposed under the provisions of this chapter shall be in addition to any other tax imposed by this state on such company.

(e) For the purposes of this chapter, the gross earnings of any producer or refiner of petroleum products operating a service station along the highways or interstate highways within the state pursuant to a contract with the Department of Transportation or operating a service station which is used as a training or test marketing center under the provisions of subsection (b) of section 14-344d, shall be calculated by multiplying the volume of petroleum products delivered by any producer or refiner to any such station by such producer's or refiner's dealer tank wagon price or dealer wholesale price in the area of the service station.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	42-234
Sec. 2	*from passage*	12-587

GL *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 $	FY 10 $
Department of Revenue Services	GF - Revenue Loss	24.1 million	25.2 million
Consumer Protection, Dept.	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill eliminates increases in the Petroleum Products Gross Earnings Tax scheduled to take place on July 1 in 2008 (from the current 7% to 7.5%) and 2013 (from 7.5% to 8.1%). This will result in a revenue loss to the General Fund of about $24.1 million in FY 09 and $25.2 million in FY 10.

No fiscal impact is anticipated upon the Department of Consumer Protection due to the bill. The bill's requirement of notices to those registering with the Department of Consumer Protection of when the governor has made a declaration of an energy resource market disruption emergency can be carried out in various fashions such as over the Internet which should result in no cost to the agency.

The Out Years

There will be an additional revenue loss of approximately $35 million per year beginning in FY 13

OLR Bill Analysis
sSB 521

AN ACT CONCERNING PRICE GOUGING AND THE PETROLEUM PRODUCTS GROSS EARNINGS TAX.

SUMMARY:

This bill (1) eliminates increases in the Petroleum Products Gross Earnings Tax scheduled to take place on July 1 in 2008 (from the current 7% to 7.5%) and 2013 (from 7.5% to 8.1%) and (2) authorizes the governor to proclaim that an energy resource market disruption emergency exists.

EFFECTIVE DATE: Upon passage

PRICE RESTRICTION DURING A DECLARED MARKET DISRUPTION

Current law bars sellers of energy resources from selling or offering them at "unconscionably excessive" prices (1) during an abnormal market disruption or (2) when such a disruption is reasonably anticipated to be imminent. The bill instead bars such sales once the governor makes such a proclamation. It defines "unconscionably excessive" as a price that represents a gross disparity between the price of an energy resource when compared to the highest price it was sold for or offered for sale by the seller in the usual course of business during the seven days immediately before the governor's declaration. "Gross disparity" means an increase of more than 15%. It makes a violation an unfair trade practice.

ENERGY RESOURCE MARKET DISRUPTION

The bill authorizes the governor to declare an energy resource market disruption emergency in the event of a statewide or regional shortage or threatened shortage due to an abnormal market disruption caused by natural disaster, weather, acts of nature, strike, civil disorder, war, national or local emergency, or other extraordinary circumstances.

DECLARING AN ENERGY RESOURCE MARKET DISRUPTION

The bill allows the governor, after making the declaration, to issue orders designating the energy resource in short supply or in danger of becoming so and imposing rationing or price restrictions. Before making any orders, the bill requires the governor to make written findings that: (1) there is an abnormal market disruption; (2) the energy resource is in short supply or in danger of becoming so due to the disruption; (3) the energy resource is essential to the health, safety, and welfare of state residents; and (4) the imposition of rationing or price restrictions is necessary to assure the people's health, safety, and welfare.

EFFECTIVENESS AND DISAPPROVAL

The bill makes any proclamation or order effective once filed in the Secretary of the State's Office and with the clerks of the Senate and House of Representatives. It requires the proclamation or order to be published in full at least once in a newspaper having general circulation in each county, but failure to publish does not impair the proclamation's or order's validity. The declaration or orders remain effective for 90 days after the proclamation takes effect or until the governor proclaims that the emergency is over, whichever occurs first.

The bill authorizes the General Assembly to disapprove the declaration by a majority vote of each chamber. The disapproval becomes effective once a notice of the action is filed with the Secretary of the State's Office.

ENERGY RESOURCES AND ABNORMAL MARKET DISRUPTION

By law, "energy resources" include home heating oil, residual fuel oil, gasoline, propane, aviation fuels, natural gas, electricity, coal and coal products, wood fuels, and any other resource yielding energy.

The bill eliminates the definition of "abnormal market disruption," which was defined as any stress on energy resource markets resulting from extraordinary adverse circumstances, such as weather conditions or other acts of nature, failures or shortages of energy sources, strikes, wars, civil disorders, national or local emergencies, and oil spills.

REGISTERING FOR NOTICES

The bill authorizes any individual, trade association, corporation, or other entity to register with the Department of Consumer Protection (DCP) commissioner to receive notice that the governor has declared an energy resource market disruption emergency. The bill requires the notices to be sent expeditiously.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 18 Nay 0 (03/11/2008)